STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 16, 2014
v	No. 316016 Calhoun Circuit Court
ROBERT MCFADDEN, Defendant-Appellant.	LC No. 2012-003757-FC

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of accessory after the fact to a felony, MCL 750.505. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to 40 to 180 months' imprisonment, with 246 days' jail credit. We affirm defendant's conviction but remand for further proceedings regarding sentencing.

On appeal, defendant first challenges the sufficiency of the evidence supporting his conviction. Following a bench trial, this Court reviews a claim of insufficient evidence de novo and reviews the evidence in the light most favorable to the prosecution to determine whether the trial court could have found that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). "Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). Additionally, "[a]ll conflicts in the evidence must be resolved in favor of the prosecution." *Id.*

"The crime of accessory after the fact is a common-law felony punishable under the catch-all provision of MCL 750.505." *People v Cunningham*, 201 Mich App 720, 722; 506 NW2d 624 (1993). MCL 750.505 provides that "[a]ny person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony . . . ." To prove that a defendant is guilty as an accessory after the fact to a felony, the prosecution must prove that a defendant "with knowledge of the other's guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment." *People v Perry*, 460 Mich 55, 62; 594 NW2d 477 (1999).

There is no dispute that on July 6, 2012, between 5:15 p.m. and 5:25 p.m., an armed robbery occurred at a dry cleaning establishment in Battle Creek. Further, defendant does not

dispute that he was at the cleaners at approximately 5:15 p.m. on that date. Shortly after defendant left the cleaners, he was seen standing near the cleaners talking and motioning to someone who was standing on the side of the building; defendant then quickly walked to his vehicle. Within ten minutes of defendant leaving the cleaners, an individual entered the cleaners through a side door and robbed the cleaners at gunpoint. Shortly thereafter, an individual matching the description of the robber was seen running from the direction of the cleaners directly to defendant's vehicle. The individual concealed himself by lying down in the vehicle, and defendant drove away.

There was sufficient evidence for a rational trier of fact to conclude that the individual who got into defendant's vehicle was the same individual who robbed the cleaners. Both the robber and the individual who got into defendant's vehicle were described as males wearing dark sunglasses, jeans, and hooded shirts with the hoods pulled over their heads. In addition, the physical descriptions of the robber and the individual who got into defendant's vehicle were very similar. Further, the man who got into defendant's vehicle ran from the direction of the cleaners within minutes of the armed robbery, had both of his hands in the front pocket of his shirt, and appeared to be excited. The identity of the perpetrator of a crime may be established by circumstantial evidence. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002).

There was also sufficient evidence for a rational trier of fact to conclude that defendant rendered assistance to the robber in an effort to hinder his detection, arrest, trial, or punishment, and that at the time defendant rendered assistance, he knew of the robber's guilt. Defendant was in the cleaners approximately ten minutes before the robbery; upon exiting the cleaners he was seen talking and motioning to someone. Defendant then headed to his car, which was parked in a nearby parking lot. On his way to his car, he indicated to some people that he knew that he was in a hurry. But defendant did not drive away until shortly thereafter, when the robber left the cleaners, ran directly to defendant's car, and concealed himself in the car as defendant drove away. Viewing the evidence in the light most favorable to the prosecution, the trial court could have found beyond a reasonable doubt that an armed robbery occurred and that defendant, with knowledge of the principal's guilt, rendered assistance to the principal in an effort to hinder his detection, arrest, trial, or punishment. We note that circumstantial evidence, as well as all reasonable inferences drawn from the circumstantial evidence, may be sufficient to establish knowledge of a principal's guilt. *People v Hardiman*, 466 Mich 417, 428-429; 646 NW2d 158 (2002).

Defendant also contends that the trial court did not properly respond to his objection to a reference in the presentence investigation report (PSIR) that identified the codefendant as defendant's son. Once defendant challenged the accuracy of the information in the PSIR regarding his relationship with the codefendant, the trial court was required to respond. MCL 771.14(6); MCR 6.425(E)(2). A trial court's response to a claim of inaccuracies in the PSIR is reviewed for an abuse of discretion. *People v Waclawski*, 286 Mich App 634, 689; 780 NW2d 321 (2009). When defendant objected to information that identified the codefendant as his son, the trial court simply stated, "Okay." However, this response does not clearly indicate whether the trial court believed that defendant's challenge had merit. See *People v Brooks*, 169 Mich App 360, 364-365; 425 NW2d 555 (1988) (holding that a trial court's response of "okay," was ambiguous and did not resolve the defendant's challenge to the PSIR). When a trial court's response to a challenge regarding the PSIR is ambiguous, it is appropriate to remand the case to

the trial court for clarification. *People v Thompson*, 189 Mich App 85, 88; 472 NW2d 11 (1991); *People v Hoyt*, 185 Mich App 531, 536; 462 NW2d 793 (1990); *Brooks*, 169 Mich App 364.

Further, it is unclear if the disputed information was considered by the trial court in determining defendant's sentence; the trial court generally stated that it based the sentence on "the facts and circumstances surrounding this offense," as well defendant's "background and history." A defendant has a due process right to the use of accurate information at sentencing, and this Court cannot speculate as to whether a trial court considered unresolved, challenged information when exercising its sentencing discretion. *Hoyt*, 185 Mich App at 533, 536. Because it is not clear if the trial court considered the disputed information when determining defendant's sentence, it is necessary to remand this case to the trial court for clarification.

On remand, the trial court is instructed to clarify whether the disputed information influenced its sentencing decision. If the disputed information is irrelevant, the information should be stricken from the PSIR. *Waclawski*, 286 Mich App at 690. If the disputed information affected sentencing, the court must resolve the challenge and resentence defendant. MCR 6.425(D)(3); *Thompson*, 189 Mich App at 88.

Affirmed but remanded for further proceedings regarding sentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello